

**PT 99-12**

**Tax: PROPERTY TAX**  
**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>MEMORIAL GARDENS</b>	)	<b>Docket #</b>	<b>97-48-38</b>
<b>ASSOCIATION, INC.</b>	)		
<b>Applicant</b>	)	<b>A.H. Docket #</b>	<b>98-PT-16</b>
	)		
<b>v.</b>	)	<b>Parcel Index #</b>	<b>0521-200005</b>
	)		
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Barbara S. Rowe</b>	
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Administrative Law Judge</b>	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. James Francque and Mr. Howard Adelstein, Jones, Day, Reavis and Pogue, Attorneys for Memorial Gardens Association, Inc.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, Chicago, Illinois on April 16, 1998, to determine whether or not Knox County Parcel Index No. 0521-20005 qualified for exemption during the 1997 assessment year.

Mr. James R. Carlson of Memorial Gardens Association, Inc., (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant. Mr. Carlson is the Director of Cemetery Operations of the Loewen Group, the parent company of the applicant.

The issues in this matter are, first, whether the applicant was the owner of the parcel during the 1997 assessment year, and secondly, whether the parcel was used by the applicant as a graveyard or grounds for burying the dead during 1997. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during

all of the 1997 assessment year. It is also determined that the applicant used a portion of this parcel for graveyard or burial purposes during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Knox County Parcel Index No. 0521-20005 did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 6. (Tr. p. 13)

2. On December 18, 1997, the Department received a property tax exemption application from the Knox County Board of Review for Permanent Parcel Index No. 0521-200005. The applicant had submitted the request, and the board recommended granting a full year exemption for the 1997 assessment year. The Department assigned Docket No. 97-48-38 to the application. (Dept. Grp. Ex. No. 2)

3. On January 29, 1998, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Chicago, Illinois, on April 16, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject parcel by a warranty deed dated January 7, 1948. The deed stated that the real estate was to be used only for cemetery purposes (Dept. Ex. No. 2 pp. 9-10)

7. The subject parcel contains 8.28 acres. (Dept. Ex. No. 2)

8. I take administrative notice of the fact that the applicant was granted a property tax exemption on May 10, 1966, for the subject parcel pursuant to Docket No. 65-383.

9. The Knox County Supervisor of Assessments assessed the applicant for a new maintenance building erected on the subject parcel in 1997. That change in usage necessitated

this application<sup>1</sup>. (Dept. Ex. No. 2 pp. 3-4; Tr. p. 14)

10. The applicant was incorporated under the Business Corporation Act of the state of Illinois on April 15, 1947. The purposes for which the applicant was formed were:

To purchase, acquire, lay-out, plat, replat, establish, build, construct, dedicate, own, hold, manage, improve, operate and maintain cemeteries for the burial of the dead and to sell, lease, convey or otherwise dispose of lots, graves or burial spaces therein.

To construct, build, erect, own, operate, manage, finance, maintain, mausoleums, columbariums, crematories, burial crypts, vaults, memorials or other necessary buildings or improvements for the burial, cremation, or care of the remains of the dead and to sell, lease, grant, convey or otherwise dispose of space therein or the use thereof.

To buy, sell, manufacture, or otherwise deal in caskets, burial vaults, urns, grave markers or any other merchandise adaptable to or connected with a cemetery or burial establishment.

To acquire, own, use, hold, lease, improve, cultivate, operate, sell, convey, mortgage, or to otherwise deal in or dispose of real property or any interest therein.

To buy, sell, create, or to otherwise deal in notes, mortgages, conditional sales contracts, open accounts, and other similar evidence of indebtedness, but not including the discounting of bills and notes and not including the buying and selling of bills of exchange.

And to carry out the purposes, to have all the general powers now or hereafter provided by the Business Corporation Act of the State of Illinois. (Dept. Ex. No. 2 pp. 14 -16)

11. The subject parcel is part of Oak Lawn Memorial Gardens. (Tr. p. 16)

12. Two buildings are located on the subject parcel. One is 40' by 45' and is used by the applicant as a maintenance building. The second building is a 20' by 20' shed. (Dept. Ex. Nos. 2, 6; Applicant's Ex. No. 1; Tr. pp. 17-25)

13. The maintenance building consists of about 1800 square feet. In it are stored tractors with backhoes necessary for digging a grave, lawnmowers, weed whips, large riding

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1. See 35 ILCS 200/15-20.

mowers, and push mowers. The building also contains a workbench, desk, tools, and maintenance supplies. (Dept. Ex. No. 2 p. 1; Tr. pp. 14, 17-18)

14. The applicant is currently piling dirt behind the maintenance building from graves that have been dug. This is part of the on-going process of developing the cemetery. The 2.48-acre area that includes the maintenance building and shed is not plated. It contains trees and brush. (Dept. Ex. No. 6; Applicant's Ex. No. 1; Tr. p. 17-25)

15. The shed was the former storage area that proved to be too small for the maintenance needs of the applicant. It is still used for storage. (Tr. p. 18)

16. Of the total 8.28 acres at issue, a 5.8-acre section of the property contains burial plots and a mausoleum. (Dept. Ex. No. 6; Applicant's Ex. No. 1; Tr. p. 17-25)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

There are numerous provisions within the statutes for exemptions of properties that are used as cemeteries and for burial purposes<sup>2</sup>. The applicant herein has chosen to incorporate under the Business Corporation Act and therefore the applicable statutory provision, found at 35 **ILCS** 200/15-45, states "All property used exclusively as graveyards or grounds for burying the dead is exempt." This language is more restrictive than the language contained in the other acts

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2. See 805 **ILCS** 320/0.01 *et seq.*, the Cemetery Association Act; 760 **ILCS** 95/0.01 *et seq.*, the Cemetery Perpetual Trust Authorization Act; 760 **ILCS** 100/1 *et seq.*, the Illinois Cemetery Care Act; 765 **ILCS** 835/0.001 *et seq.*, the Cemetery Protection Act, and 805 **ILCS** 110/0.01 *et seq.*, the Religious Corporation Act.

providing exemptions for burial or cemetery purposes. The Illinois Supreme Court has held that the fact that a cemetery is organized under the Business Corporation Act, rather than as a special charter cemetery association, does not affect its right to operate as a cemetery even if it sells markers and monuments in competition with private enterprise. People ex rel. Guettler v. Mount Olive Cemetery Association, 26 Ill.2d 156 (1962)

The applicant in its brief raises several issues. The first is whether the entire Parcel Index No. is at issue or merely the area where the maintenance shed was erected in 1997.

Because a cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years, the decision that property was taxable in certain years is not *res judicata* as to status of property during subsequent years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1<sup>st</sup> Dist. 1981); Application of County Collector of Du Page County, 157 Ill.App.3d 355 (2<sup>nd</sup> Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App. 3d 816 (3<sup>rd</sup> Dist. 1978); Du Page County Bd. Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2<sup>nd</sup> Dist. 1995); People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4<sup>th</sup> Dist. 1980). I therefore find that the entire Parcel Index No. is at issue.

The second issue the taxpayer raises is whether the use of the shed and the maintenance building for storage of items used in digging grave plots and in the upkeep of the cemetery qualifies those areas for exemption. In addressing the issue of what constitutes burial purposes for the determination of a property tax exemption, the applicant in its memoranda of law relies on the decisions rendered in People v. Rosehill Cemetery Co., 371 Ill. 510 (1939); Spring Hill Cemetery of Danville v. Ryan, 20 Ill.2d 608 (1960); First National Bank of Danville v. Ryan, 23 Ill.2d 250 (1961); and Gast Monuments, Inc. v. Rosehill Cemetery Company, 207 Ill.App. 3d 901 (1<sup>st</sup> Dist. 1990) leave to appeal denied, for the proposition that burial purposes includes not only internment but also continuing care, preservation, and ornamentation of the place of internment.

In the reliance on People v. Rosehill Cemetery Co. *supra* (herein referred to as Rosehill) the applicant is correct that the case concerns the subject of capital stock tax and not a property tax exemption. The defendant in Rosehill was created and incorporated by a special act of the General Assembly in 1859. The specific provision at issue in Rosehill “reads: ‘All lots sold for burial purposes by the cemetery company \* \* \* shall be free from taxation \* \* \* and all estate, real or personal, held by the company, actually used by the corporation for burial purposes, or for the general uses of lot holders or subservient to burial uses and which shall have been plated and recorded as cemetery grounds, shall be likewise exempt as above.’” *Id.* at 511-512. The court held that a capital stock assessment was within the terms of the charter exemptions.

The applicant herein does not have a charter exemption with the corresponding tax exemption language similar to the provisions in Rosehill. The case also concerns the taxation of the capital stock of the corporation. The Illinois Supreme Court in The People v. Elmwood Cemetery Co. 317 Ill. 547 (1925) stated that “[T]he exemption of lands used for cemetery purposes is one thing and the exemption of the capital stock of the corporation is quite another.” *Id.* at 550. I therefore find the language of that case inapplicable to the facts before me. The statutory exemption language before me is much more restrictive than the provisions in Rosehill’s charter.

The applicant next cites Spring Hill Cemetery of Danville v. Ryan *supra* (hereinafter referred to as Spring Hill) in its memorandum of law for the proposition that the primary use of the property and not its incidental use that must be related to burial purposes. The proposition is correct and I find Spring Hill to be applicable to the facts before me.

Spring Hill Cemetery was organized as a nonprofit organization in 1864 under a general law, effective April 28, 1864, that permitted the incorporation of cemetery associations. Section I of the law authorized the associations to acquire land not to exceed 50 acres that could be used to lay out burial plots for the dead with convenient aisles and erection of “hearse houses” thereon. Section 8 of the act provided: “The property of the corporation, its ground, lots and appliances shall be exempt from taxation and shall not be liable to sale on execution.” The law

was subsequently amended to allow additional land to be purchased for those purposes but did not include the new land acquired under the charter exemption. *Id.* at 610-615. Therefore, it was necessary for Spring Hill to show that its use of the new land qualified for exemption. The court held that the manager's residence and land being held for future use and leased to another entity did not qualify for exemption citing Bloomington Cemetery Ass'n v. People ex rel Baldrige, 170 Ill. 377 (1897) and Glen Oak Cemetery Co. v Board of Appeals, 358 Ill. 48 (1934) in support of that determination. I find that the applicant herein is not a cemetery association and therefore the exemption language for the applicant herein is more restrictive than the language for cemetery associations. Nonetheless, I also agree with the court that land held for future use does not qualify for a property tax exemption as land used for burial purposes.

First National Bank of Danville v. Ryan, *supra* (hereinafter referred to as First National Bank) is relied upon by the applicant for the proposition that it is the primary use of the property and not its incidental usage that determines whether or not a parcel is entitled to a property tax exemption under this statutory provision. I certainly agree with that proposition. In First National Bank, the court held that farming was not a use entitled to a property tax exemption under the cemetery provision. I agree with the court that farming is not the same as land used for burial purposes. The applicant herein does not use the land at issue for farming, and I therefore find that the case is inapplicable to the facts before me.

The last case relied upon by the applicant in its brief is Gast Monuments, Inc. v. Rosehill Cemetery Company, *supra* (hereinafter referred to as Gast). As the applicant correctly notes, Gast involves a statutory provision and question of law that is not at issue herein.

The Gast court was concerned with the sales of headstones by a for-profit business entity, Rosehill Cemetery Company. Rosehill Cemetery Corporation was a not-for-profit special corporation, organized and granted a special charter exemption in 1859 by the Illinois legislature. Rosehill Cemetery Company purchased the assets of the not-for-profit special charter corporation, the Rosehill Cemetery Corporation. Gast Monuments, a competitor that also sold monuments in the same locale, brought suit because Rosehill Cemetery Company also sold

monuments. In Gast, the court held that the sale of headstones by Rosehill Cemetery Company was not unlawful. The court specifically stated that, “The designated portion of the property upon which defendant sells headstones, burial markers and monuments for use in Rosehill Cemetery is not tax exempt, and defendant does not now claim that the property so designated is tax exempt.” *Id.* at 904-905

The question of lawfulness or unlawfulness of the sale of monuments and headstones by the applicant is not the question before me. I therefore find Gast distinguishable from the case at issue.

The statutory provision at issue is very restrictive. It states that the use must be for graveyards or grounds for burying the dead. In Rosehill Cemetery Co. v. Kern, 147 Ill. 483 (1893) (hereinafter referred to as Kern) the Supreme Court addressed the charter exemption granted to Rosehill Cemetery Company that contained an exemption for “all estate, real and personal, held by the company, actually used by the corporation for burial purposes, or for the general use of lot holders, or subservient to burial uses, . . . .” The court in Kern held that lands and buildings that were used for boarding the horses that were only used for the maintenance of the cemetery, greenhouses that were used for growing flowers that were to be put on graves, and a dwelling house used by employees of Rosehill who worked on the grounds were not used for cemetery purposes.

I find that the facts at issue in Kern are similar to the facts before me concerning the 2.48 acre area that contains the maintenance building, shed, and dirt that has been removed from other graves dug in other areas of applicant’s cemetery. The Supreme Court in Kern held that land owned by a cemetery and platted for future use for burial purposes, but only used for raising sod and flowers for use in the cemetery, did not qualify for exemption.

I also find instructive the decision in Glen Oak Cemetery Company v. The Board of Appeals of Cook County, *supra*; in which the Illinois Supreme Court held that a 40-acre segment of an 80 acre tract did not qualify for exemption because the area was not prepared for cemetery use. Some trees had been planted on the 40-acre section, an outlet drainage system was



constructed on it, and a nursery was located there as well. The court found that the section was not used exclusively for burial purposes. *See also* Op. Att'y Gen. (Ill) S-672 (1973). Based on the foregoing, I conclude that the 2.48-acre portion of the parcel in issue was not used exclusively as a graveyard or grounds for burying the dead in 1997.

**THE 5.8-ACRE SECTION OF THE PROPERTY THAT CONTAINS BURIAL PLOTS AND A MAUSOLEUM I FIND WAS USED AS A GRAVEYARD OR GROUNDS FOR BURYING THE DEAD.** Where an identifiable portion of a property was used for an exempt purpose while the remainder was used primarily for nonexempt purposes, the courts have held that the portion used for exempt purposes qualified for exemption and the remainder did not qualify for exemption. City of Mattoon v. Graham, 386 Ill. 180 (1944) and First Methodist Episcopal Church of Chicago v. City of Chicago, 26 Ill. 482 (1861).

I therefore recommend that 70% of Knox County Parcel Index No. 0521-20005 be exempt from property taxation during the entire 1997 assessment year. I also recommend that 30% of Knox County Parcel Index No. 0521-20005 remain on the tax rolls for 1997 and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
January 12, 1999